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Political Risks and Political Stability in Ukraine

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Content

RESUME

The UCIPR, that regularly assesses political risks in Ukraine, states their degree of 6-7 points made by the ten-point scale. Within the assessment period (from June to October 2009), neither the degree nor the structure of political risks radically changed. Yet, in fall 2008 – spring 2009, major risks were characterized by the incomplete process of regrouping of political interests, whereas their structure was mostly determined by relations of enhanced political corruption.

Grown on shadow agreements and exchange of resources to get or to strengthen power in the interests of individuals, relations of political corruption ruin principles of publicity and social trust in the process of power legitimation. Corruption and its political derivative weaken government institutions and generate a system of parallel governance that serves the purpose of increasing power in the interests of individuals. Political corruption increases in the absence of system reforms in different areas and, in its turn, postpones prospects for their implementation.

Political corruption relations develop in a special way in the context of preparations for the presidential campaign. Corruption methods expected in its course include direct and indirect bribery of voters, the use of budget money and money from outside electoral funds of candidates, corruption of the media, the illegitimate use of law-enforcement structures, the forgery of documents and the illegal influence on court judgments.

The destabilization of the work of parliament as the legislator is one of the main negative factors of the political development. It emerges as a result of the dominance of political interests over parliamentary procedures, incorrect administration of parliamentary procedures and their manipulation for private political purposes. Specifically, voting procedures and rules that forbid to simultaneously hold deputy mandates in the Verkhovna Rada and executive structures or to carry out any business activity need to be complied with. The illegal holding, by some politicians, of offices in different social production sectors creates unequal opportunities for other entities. The practice of blocking plenary sessions of the VR by MPs impedes the regular and effective legislative process (for this reason, none out of 24 plenary sessions has been held over 1 September – 7 October, 2009).

The government assumes functions of “manual administration” because of the disorganization of the parliamentary business and the imbalanced legislative process. Given the understaffed composition of the government (3 vacant positions) and the process of preparing the national budget for 2010, such the state of procedures causes risks of unpredictability both for the implementation of some government policies and for the stability of the political system on the whole.

A positive aspect, from the viewpoint of ensuring the political system stability within the monitoring period, is an end to efforts to change the political system and the system of power in a shadow manner. At the same time, a probability of changing the political regime by non-transparent means remains among factors of political risks for the medium-term period (until January 2010), as electoral prospects of key presidential candidates will get more pronounced.

Political corruption adversely affects both the political stability and the business climate, eroding principles of equal competition, in particular in the process of privatization of state property. Earlier on, privatization has been motivated by the government intention to ensure budget receipts, whereas as the elections approach, privatization units are viewed as means of exchange of resources with groups of influence.

POLITICAL CORRUPTION IN THE SYSTEM OF POLITICAL RISK ASSESSMENT

In the context of assessment of political risks and expectations concerning the stability of the political process, of special note are relations that lie outside the area of public policy but nevertheless substantially determine decision-making.

Political corruption as relations built on non-public satisfaction of private political interests has a number of threats to democracy and effective governance. The most serious among them are a blow to the trust in political and governmental institutions and their actions. According to American researcher James Jakobs,[1] born inside the political system, in the core of the state, **political corruption launches identical mechanisms at other levels and legitimates permissiveness**. In his opinion, in developed democracies, a loss of the trust in fair and open politics and the absence of the trust in politicians and parties erode the fundamentals of democracy and the legitimacy of its institutions, whereas in transitional societies, political corruption threatens vitality of democracy and makes new democratic institutions weak and ineffective. In developed and transitional democracies, political corruption entails separation between the state and the society and enhances anomie in the society[2].

Political corruption impedes equal access to justice, the right to take part in the political life and to exercise other civil rights. It hampers the democratic development and serves as a major barrier to transparency in the political and social life. In the long run, regular political corruption, as a means of "spoiling" the established decision-making procedures, as a means of conducting uncompetitive policy through broad clientele networks and weakening the trust in governmental institutions and their capacities, creates grounds for an authoritarian political regime. Power institutions find themselves outside the established procedures and have low chances to perform their functions. Hence, **political corruption shall be recognized a fundamental obstacle to the development of social and political relations in Ukraine on principles of the democratic delegation of power and the fulfillment, by the state (by its institutions and officials), of regulatory functions**.

The term "political corruption" is not defined in the Ukrainian law because political corruption is a motive, which is difficult to formalize. Only the term "corruption" is legally determined. In the law "*On Principles of Preventing and Combating Corruption*" of 11 June, 2009[3], ***corruption*** is defined in the sense of abuse of office or authority by officials for the purpose of getting illegitimate benefits or receiving promises/proposals of such benefits for themselves or other persons or, respectively, promises/proposals or granting illegitimate benefits to such persons or, on their request, other natural persons or legal entities so that to incline them to illegal actions due to abuse of office or authority. This definition lies in the context of the approach of the UN General Assembly, under which *corruption should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted*[4].

In political science, the term ***"political corruption"*** marks abuse of authority for illegal private (personal or particular) economic and/or political purposes. From the author's viewpoint, the key motivation goal of political corruption relations is the possession of power resource, which is actually a difference between political and economic corruption.

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[1] Jakobs J. B. Dilemmas of Corruption Control // Political Corruption in Transition. A Skeptics Handbook/ Ed.: by Kotkin S., Sajo A. – Budapest, 2002. – P. 83.
[2] The same source
[3] The law *"On Principles of Preventing and Combating Corruption"* of 11 June, 2009 will come in effect from 1 January, 2010 onwards. It was approved instead of the law *"On Combating Corruption"* of 5 October, 1995
[4] *The Code of Conduct for Law-Enforcement Officials,* the UN General Assembly resolution 34/169 of 17 December, 1979

The matter concerns the application of corruption technologies to attain political goals: the usurpation of power, strengthening of it etc. Considering this as a period of corruption practice, the author would like to state corruption in politics is not limited exclusively to this stage but spreads to the whole political process.

Not only state officials but also all agents, who are engaged in politics and possess (dispose) an exchangeable resource, are bearers of political corruption relations. Figuratively, political corruption relations resulting in the receipt of the so-called corruption rent can be expressed with the power-property-power formula. In other words, political corruption means the receipt of not economic (material or monetary) profit but a special kind of dividends, political ones; it does not resolve issues of the business development but enhances one's positions in politics. Proceeding from the definition for "illegitimate benefit" given in the law *"On Principles of Preventing and Combating Corruption"* of 11 June, 2009[5], it is possible to say relations of political corruption are built on illegitimate and illegally gained political (power) benefit.

The author uses the term "political corruption" to characterize relations of illegitimate (illegal) exchange of resources with groups of influence to increase private power influence, which erodes democratic procedures and institutions and damages the social interest.

Political corruption seriously threatens democracy since it ruins the trust as the key element of power legitimation. As a rule, such relations emerge between those, who own (or, in case of government officials, dispose) any resource that could be exchanged for another resource ensuring the political support. Despite approaches of many researchers to political corruption are based on the understanding of subjects of corruption offences as public figures (e.g., according to Joseph LaPolambara, political corruption is any act performed by officials, when departing from their legal obligations in exchange for personal advantages[6]), the author thinks mechanisms of political corruption could be applied not only by officials but also by any other persons striving for political advantage gained by means of illegitimate exchange. For instance, the mechanism of bribery of voters, which by nature is the illegitimate exchange of an economic resource of a candidate for a political benefit (votes), is not necessarily implemented by officials. Such a person, even if he/she does not represent the government, becomes an agent of politics by virtue of personal aspirations to get power. Hence, the subject of actions linked to political corruption should be understood as everyone, who gets power by illegal means or encourages this by giving personal resources in the support of such actions in exchange for desirable favors/benefits.

As it has been mentioned above, political corruption is not abuse of power by political leaders in order to get personal benefits to increase influence or wealth. Political corruption does not necessarily mean financial quotas; it can take a form of trade in influence or granting of special privileges in exchange for favors to enhance political (power) positions. Political corruption covers a vast circle of crimes and offences committed by politicians not only in and after the exercise of office but also in the process of getting it. Researchers make a special emphasis on the fact that political corruption differs from corruption offences of ordinary bureaucrats, since it is committed by political leaders or elected officials vested with social powers and trust and bearing responsibility to the whole society for actions pertaining to the national interest[7]. Hence, relations of political corruption eventually ruin national interests.

[5] The term "illegitimate benefit" in the law *"On Principles of Preventing and Combating Corruption"* of 11 June, 2009 means funds or other property, advantages, privileges and favors of material or non-material nature promised, offered, given or received for free or for the price lower than the minimum market value without any legal grounds

[6] Sajo A. Introduction. // Political Corruption in Transition. A Skeptics Handbook. Ed.: by Kotkin S., Sajo A. – Budapest, 2002. P. 3

[7] According to American scientist Mark Philip, criteria of political corruption are as follows: it is committed by state officials and violates the trust of citizens who delegated them powers; it is committed in a manner that hampers social and national interests for the sake of personal interests, which runs counter to the officially declared and legally set goals; state officials act in the

According to the definition of American political scientist Harold D. Lasswell**, in the political sense, corruption is a violation of a common shared interest in favor of private privileges**. That is to say, relations of political corruption do not mean a trivial offense, as the spread of corruption damages fundamentals of public policy and interests of the society that constitutionally declared principles of democracy, the legal and social state.

In countries like Ukraine, where the development of public procedures is impeded and socio-political relations are built mostly on hidden ties, a specific feature of political corruption is its "legality", when politicians use the absence of procedures, and "illegality", when procedures are set but violated and ruined. The observation of Joseph LaPolambara that "in Eastern Europe, "corrupt" officials often do exactly what they would have done under the law anyway"[8] stands true for Ukraine: **weakness of governmental institutions and improper administration of government services create conditions for officials to "legally" abuse authority they are vested with under the law in their personal interests**.

Assessing whether **political corruption in Ukraine is fundamental or attributive**, one should pay attention to its **systemic nature**: relations of political corruption are based on clientele networks that emerged partly as the heritage of the Soviet nomenclature and partly as a phenomena of the new time characterized by the retention of groups of supporters by the private capital and the designation of representatives of these group (including the use of elements of nepotism) to public offices. **The advent of the private capital to politics symbolized the transfer of the social clientele as the system of private paternalism to the political process**, in particular to party-building and party activities (party politics). Clients of these networks, who owe their patrons the social (often career) growth, in due time pay them with loyalty and favors instead of complying with procedures of an institution they represent. This is pointed out by Hungarian scientist Andras Sajo, who views it as "a network of social relations, where personal loyalty to the patron prevails against the modern alternatives of market relations, democratic decision-making and professionalism in public bureaucracies."[9]

> According to data of an expert survey on "Impact of Political Corruption on the Stability of the Political Process: Corruption Practices in the Election Process" being a part of this Document (enclosed), **corruption relations affected to some extent all institutions of Ukraine's political system** (p. 2). None of respondents said "I have never heard about something like this" or "Corruption is not typical for political process in Ukraine and exists in other areas". 100% of pollsters pointed out the political process in Ukraine is characterized by the purchase (sale, exchange) of decisions by a parliamentary faction, the purchase (sale, exchange) of offices in national executive authorities, the purchase (sale, exchange) of court judgments, the purchase (sale, exchange) of decisions of control bodies (taxation, sanitary and epidemiological, fire and other services), 96% of respondents are sure of the purchase (sale, exchange) of decisions by the government (ministries).

In its turn, the clientele forms networks of influence and creates stable forms of involving the social support. It is based on unofficial ties, which allows authorities to substitute formal procedures with behind-the-scenes agreements. Hence, **clientelism and political corruption are intergenerative and interdependent factors of social relations**.

The on-going delay of the administrative reform, which would separate the public service system from the system of political decision-making and set up professional public service, distorts the stable system of selecting public officials because of the dominance of client-patron relations. This ruins the system of

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interests of a third party guaranteeing it access to services or resources, to which it could not access by other, legal means .// Philip M. Conceptualizing Political Corruption // Political corruption: concepts and context. – New Jersey, 2002. P. 41

[8] Sajo A. Introduction. // Political Corruption in Transition. A Skeptics Handbook. Ed.: by Kotkin S., Sajo A. – Budapest, 2002. P. 3

[9] Sajo A. Introduction. // Political Corruption in Transition. A Skeptics Handbook. Ed.: by Kotkin S., Sajo A. – Budapest, 2002. P. 3

professional public service and enhances influences of politicians authorized to carry out personnel policy in national authorities.

Summarizing the above, it is possible to conclude that relations of political corruption are typical for countries that failed to pass reforms necessary for democratic governance and social relations. In such countries, the dependence of political decision-making on the illegal receipt of personal political benefits to the detriment of social interests is growing. The clientele and its "daughter", political corruption, are as much dangerous as these phenomena are close to those responsible for political and administrative decision-making and as power institutions are ruined due to their increasing dominance.

The duration of the application of corruption methods is determined by the extremely high level of their efficiency. Some 48% of experts polled by the UCIPR are sure it is impossible to completely eradicate political corruption as this phenomenon is typical for all societies, including democratic ones (see materials of the expert survey on "Impact of Political Corruption…", p. 9). Yet, it is the systemic nature of corruption practices that bears all the risks up to the destruction of government institutions. Besides, **in developed democracies, an important anti-corruption measure is, together with mechanisms of institutional and legislative control, the so-called zero tolerance, according to which the higher office an official holds, the more severe is a social assessment of his/her actions**[10], whereas in underdeveloped societies, including Ukraine, the situation is often the opposite: the society justifies corruption offenses of top officials and high-ranking politicians and blames less influential persons for less socially dangerous illegal actions. This proves and confirms specificities of paternalistic social relations in Ukraine, under which citizens treat officials not as performers of delegated functions on whom their life success depends, but as a show played by strange figures with the different degree of attractiveness.

Traditions of clientele networks in the political and administrative process can be eliminated exclusively by a shift to system reforms, which will allow changing the basis of socio-political relations with the launch of the political process at the stage of elections, recruiting of political and administrative elites. The performance of functions by the government should be maximally regulated and transparent. It is necessary to carry out the administrative reform, which will help separate the political (fight for power) and administrative processes, strengthen the system of public service, set up a system of independent courts and ensure the maximum compliance with the rule of law.

[10] Jakobs J.B. Dilemmas of Corruption Control. P. 84

POLITICAL CORRUPTION IN THE ELECTORAL PROCESS

Assessing **the level of corruption of the upcoming presidential campaign, experts are not inclined to believe it will be higher than the previous ones**.

> Only ¼ of polled experts (25%) expect surges of corruption during the elections. Most respondents (80%) stress the presidential campaign of 1999 was the most corrupt. It was followed by the 2007 (special) parliamentary elections (60%) and the 2006 elections to parliament and local councils (48%) (see materials of the expert survey on "Impact of Political Corruption…", p. 3).

Hence, the author thinks **the clientelistic nature of socio-political relations and the party system backed by interests of those, who illegally gained offices in the system of power, necessarily determine the application of corruption techniques in the electoral process**.

The simplest and the most famous form of political corruption is the "purchase of votes" spread in electoral campaigns at the local and national levels. A type of political system and its level make seekers of power only change this form, not deny it.

According to expert assessments, main expected types of corruption offences incorporate:

- Direct and indirect bribery of voters
- Administrative interference with elections
- Illegal influence on court judgments
- Use of budget (public) funds
- Forgery of documents
- Illegitimate exchange of resources with groups of influence for personal advantages
- Abuse of authority of law-enforcement structures
- Bribery of the media's influence on the information space

Respondents guess political forces will apply varieties of the above techniques in the extent to which they have access to resources of influence and exchange**: the more branched a party's clientele network is and the more tools of influence a political force has, the more opportunities it will have for political corruption and vice versa**. In this context, Donatella Della Porta and Alberto Vanucci correctly observed, "Corrupt politicians are said to be very skilled in networking, building up circles of loyal supporters, to whom they distribute favors (or even just promises of favors)."[11] "Moreover, the actors in the corrupt exchange need "cover-ups"; in other words, they must minimize the likelihood of being reported and investigated. With either threats or favors, the corrupt politicians must erect a wall of silence around their illicit dealings. This can be done by corrupting judges ad/or the local press. This is how corrupt networks are formed."[12]

In the upcoming elections, the horizon of corruption networks could be even "successfully" expanded due to **the impact on activities of members of district electoral commissions**. The media reported

[11] Della Porta D., Vanucci A. A Typology of Corrupt Networks // Comparing Political Corruption and Clientism. Ed. Kawata J. – Ashgate, 2006. P. 26
[12] Della Porta D., Vanucci A. A Typology of Corrupt Networks // Comparing Political Corruption and Clientism. Ed. Kawata J. – Ashgate, 2006. P. 27 – 30

some political forces offer the "motivation approach" to members of district electoral commissions, who will "favor" a victory of their candidate: they will be included into lists of candidates to deputies of local (district and city) councils during elections in May 2010. As is known, the procedure for the setting up of district electoral commissions at presidential elections in each of 225 territorial constituencies provides for the submission of candidatures (by two persons to every electoral commission from a candidate) by presidential candidates registered in the Central Electoral Commission (Article 23 of the law *"On Elections of the President of Ukraine"* in the redaction of 10 September, 2009). Such motivation can apparently urge some members of district electoral commissions to illegal actions: by satisfying private (corporate, personal) interests, political corruption erodes legitimate procedures.

The so-called technical candidates, whose number will vary, will have opportunities to affect the work of district commissions. The use of potential of representatives of such candidates in district electoral commissions in the second round remains open as well.

Corruption influences often determine activities of the media, whose owners take part in the formation of corruption "rent" in favor of a certain candidate. It is a widespread phenomenon in the national or municipal media to use media opportunities in favor of a political force represented by the leadership of the media founder.

Of special note are illicit influences on the law-enforcement system, the court system and judges involved in the resolution of election disputes in view of possible lobbying of political interests in their verdicts for different reasons.

There is a high possibility that corrupt influences will play the essential role in the presidential elections. Though, unlike the 1999 campaign, which experts deem to be the most corrupt and in which the resource was concentrated mostly in the interests of the Head of State, the 2010 elections will be marked with the completion of clienteles. The question is whose clientele will prove to be the most branched, the most ready-witted and the strongest. Taking into account the general dependence of the party activity upon shadow influences, such mechanisms as bribery of voters, illegal influence on court judgments and bribery of the media's influence on the information space will be used by political forces that do not actively participate in decision-making in the Verkhovna Rada today.

PROCEDURAL ASPECTS OF DECISION-MAKING IN PARLIAMENT WITH RISKS OF INSTABILITY OF THE POLITICAL PROCESS

Among factors of influence on the political development of special note are the dominance of political corporate interests over parliamentary procedures and their insufficient regulation, which, in the long run, destabilizes the work of parliament as the legislator.

> According to polled experts (see materials of the expert survey on "Impact of Political Corruption…", pp. 4-5), corruption motivation can to a certain extent be traced in actions of some factions and groups represented in Ukrainian parliament. Political forces that have opportunities for illegal exchange, access to resources and election position so strong that the loss of reputation will not threaten the electoral success have more corruption motivations. If trade in influence seriously tarnishes the political reputation of members of such forces, they are threatened with the loss of political subjectivity.

In parliament, political corruption exists as trade in influence and manipulation of procedures. "Trade in influence" means favors or denial of personal political positioning in the electoral field in exchange for privileges of lobbying economically or politically beneficial decisions. Manipulation of procedures is also used to meet political interests. It is even easier to do because of the absence of a proper legal form of a regulatory document, the Regulations of the Verkhovna Rada, which establishes the organization and procedures for parliamentary business.

> The principle of the rule of law in the system of normative and legal acts is entrenched in the Constitution of Ukraine. Article 92 lists the most important social relations that shall be regulated exclusively by laws of Ukraine, including "the organization and operational procedure of the Verkhovna Rada". This was addressed by the judgment of the Constitutional Court of Ukraine of 1 April, 2008. Meanwhile, after the loss of validity of the 16 March, 2006 parliamentary resolution annexed with the Verkhovna Rada Regulations and the loss of validity of the Temporary regulations of the Verkhovna Rada (approved by the 8 April, 2008 parliamentary resolution "On Some Aspects of Normative and Legal Regulation of the Work of the Verkhovna Rada of Ukraine") under the verdict of the Constitutional Court of 17 September, 2008, on 19 September, 2008, the VR passed a legally uncertain document, the Regulations of the Verkhovna Rada.

The absence of a proper legal form of the Regulations, which, as is governed by their Article 1 "set the procedure for the preparation and holding of sessions of the Verkhovna Rada, its meetings, the formation of national authorities; established the law-making procedure, the procedure for consideration of other issues within its competence and the procedure for the exercise of controlling functions of the Verkhovna Rada", creates additional difficulties in the organization of the work of parliament. Specifically, voting procedures set by the above Regulations are violated. Under the Regulations, "MPs shall vote personally by the electronic system in the VR session hall or in the place designed for secret voting near the hall for plenary sessions" (Article 47), whereas the procedure for voting by the electronic system is substituted with voting by raising hands. The resolution "On Changing the Method for Voting on Bills Pertaining to the Increase of Social Standards" endorsed on 22 September, 2009 on the Speaker's initiative ruled, "At sessions of the Verkhovna Rada, MPs shall vote on bills (registration No. 4762, 5062, 5091-1, 5091-2 and 5091-3) according to results of their discussion personally by raising hands. The Speaker shall read name, second name and patronymic name of every MP in the alphabetic order. Every MP, whose name was uttered, shall raise his/her hand and say his/her will "for" to the microphone. If he/she votes "against" or abstains, he/she shall say a respective will without raising his/her hand. The Count Committee shall count voices and inform the Verkhovna Rada about outcomes of voting on every bill." On 6 October, this resolution was recognized invalid. Needleless to say, should the Regulations be a document of higher legal force, such situations with the approval of special single

procedures and their further abolition would be avoided thereby ensuring the stability of parliamentary procedures.

Procedures for the acquisition and resignation of deputy powers are often violated, which serves as a reason for the combination of executive and business offices by MPs prohibited by the Constitution: under Article 78 of the Basic Law, "MPs shall not have any other representative mandate, be in the civil service, hold any other paid offices, carry out gainful or business activity (with the exception of teaching, scientific and creative activities) or be members of the administration/governing body of a profit-making enterprise or organization." The declaration of the verdict by the Constitutional Court of Ukraine of 29 January, 2008 reads, "The essence of the settlement of disputes concerning the simultaneous holding of offices, the requirement to ban which is determined by the nature of respective representation, is the renouncement of deputy powers."

As of now, at least 6 MPs combine offices (3 from the BYuT faction, 1 from OUPSD and 2 from Lytvyn Block). Withdrawal of deputy mandates of these persons has been delayed for different periods though Article 78 of the Constitution of Ukraine reads, "Where there emerge circumstances preventing the MP from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, the MP shall, within twenty days from the date of the emergence of such circumstances, withdraw from the business concerned or personally apply for the resignation of deputy powers." Article 81 also clearly governs, "Powers of the MP shall terminate prior to the expiration of his/her term in office in the event of <…> «5) his/her failure, within twenty days from the date of the emergence of circumstances preventing him/her from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, to remove such circumstances." Meanwhile, the Verkhovna Rada is not concerned with the simultaneous holding of office by some MP probably because their real number (especially in connection with business activities of MPs) is so high that if the letter and the spirit of the Constitution are complied with, parliament would not have a majority to make decisions because of mass resignations. Today, the implementation of procedures concerning the prohibition to combine offices is substituted with speculations on the expediency of their coming into effect.

New wordings of the Constitution will probably set new rules on the simultaneous holding of offices and interpret types of activities anew. Specifically, the bill '"On Amending the Constitution of Ukraine" submitted for discussion by the President provides for the simultaneous holding of governmental and deputy offices (Article 90). Article 78 of the bill '"On Amending the Constitution of Ukraine" promulgated by the media this June as the document jointly drafted by the Party of Regions and BYuT also reads, "MPs shall have the right to hold ministerial offices in the Cabinet, such as the offices of the PM, First Vice PMs, Vice PMs and ministers. MPs may not hold any other representative mandate, be employed in the public service, hold other paid offices, carry out other paid or business activities (save the education, scientific and creative ones; the use and disposition of corporate rights in business associations) or be members of the leadership or advisory council of profit-making enterprises/organizations." To avoid double interpretation, the PR and BYuT bill suggests supplementing Article 42 of the Constitution in force with the rule reading, "The ownership, use and disposition of corporate rights in business associations shall not pertain to business activities." The above excerpts evidence **politicians have not denied the idea of the simultaneous holding of executive and legislative offices** though the expediency of such step is neither substantiated nor argued, especially in view of its correlation with other novelties.

The tactics of blocking plenary sessions of the Verkhovna Rada by MPs impedes the stability of law-making: none effective session has been held from 1 September (the beginning of the work of the Verkhovna Rada of the 6th convocation) to 7 October. Despite the Verkhovna Rada Regulations do not provide for the blocking of the parliamentary rostrum as a procedure of the parliamentary process, it is

rather often used by different political forces to attain their own goals, discrediting the efficiency of law- and decision-making. The latter provides for discussion and voting at plenary sessions for draft decisions – bills and resolutions submitted after their consideration in special parliamentary committees. Except for the destruction of procedural aspects, the blocking impedes consideration of draft decisions on their merits.

Rules of the law on developing the legislation need to be strictly complied with. For instance, the notorious law *"On Prohibition of Gambling"* of 15 May, 2009 provided for the approval, within 3 months, of a regulatory mechanism for gambling business, which radically changed business conditions in this area, but failed to list any compensation mechanism. Meanwhile, the negative social effect of gambling has not been eliminated as of now. The government lost a tax-payer and incomes from gambling moved into the shadow.

Special attention shall be paid to **lability of Ukraine's legislation**. The legislator substitutes the lack of reforms with the "flexible" application of rules of the law. Specifically, only in September 2005, a number of changes to the law "On Safety and Quality of Foodstuffs" were endorsed banning the sale of homemade dairy products and meat on foods markets, which is to come into effect on January 1, 2010 (Article 35). Yet, over 5 years, the government has been failing to create conditions for the correct application of the above rule with regard to interests of different parties. In October-December 2009, the government is expected to pass a law postponing the effect of the rule until 1 January, 2015. As said by the Chairman of the State Committee for Entrepreneurship, if changes are not approved by the law, they will be regulated by the Cabinet resolution. At a meeting with the voters on 16 October, 2009, Speaker V. Lytvyn "explained" the above approach, "The World Trade Organization is said to protest. Though, I did not see anyone excluded from the WTO."

A positive aspect, from the viewpoint of ensuring the political system stability within the monitoring period (June-October 2009), is an end to efforts to change the political system and the system of power in a shadow manner like it happened in April-May 2009 in the form of shadow agreements of members of the ruling coalition and the opposition on amending the Constitution. At the same time, these activities might enhance in the pre-election period, when the regrouping of interests of groups of influence is clearer and electoral prospects of key presidential candidates get more pronounced. Hence, **a possibility of changing the political regime by informal agreements remains among factors of political risks for the medium-term period (until January 2010)**.

PROCEDURAL ASPECTS OF DECISION-MAKING IN THE GOVERNMENT

Positive aspects aimed to reduce risks of unpredictable decisions of Ukrainian authorities incorporate new rules of the government regulations that set procedures for holding sessions of the Cabinet, preparation and making of decisions and others. On 8 July, 2009, these rules were introduced to the valid Regulations of the Cabinet of Ministers of 18 July, 2007. Under new rules, plans of the preparation of government draft acts on the implementation of laws, presidential and parliamentary decrees shall be approved at the Cabinet sessions, whereas in practice, such documents are approved solely by either the Prime Minister or one of Vice Prime Ministers. Rules on the right of the government to abolish acts of local state administrations (which actually meant the excess of the legal competence of the government) and to pass government orders by polling the Cabinet members are deleted. Today, the right of the PM or the Vice PM to solely make decisions on the content and procedures governing activities of national

executive authorities are also deleted from the Regulations, which means the stabilization of decision-making in the government.

However, **risks resulting from unpredictable actions of the government emerge due to the non-compliance with regulation procedures; therefore, their reduction partially depends on the proper administration of procedures**. In this respect, according to the published data of the Presidential Secretariat (since an authorized representative of the Head of State has the right to take part in sessions of the Cabinet, the author can refer to this source), at sessions of the Cabinet within the initial six months of 2009, violations of the Regulations of the Cabinet then in force were as follows: 398 decisions were made at sessions of government committees without preliminary consideration (32% of draft decisions considered at the Cabinet sessions); 297 decisions were made without the opinion of the Ministry of Justice (24 % of draft decisions considered at the Cabinet sessions); 78 decisions were made without or with partial consideration of the opinion of the Ministry of Justice on their non-compliance with legislative acts of higher legal force (6% of draft decisions considered at the Cabinet sessions); and 178 decisions were made by voting (15 % of draft decisions considered at the Cabinet sessions).

Moreover, **the disorganization of the work of parliament and, as a result, the imbalance of the legislative process have long served as preconditions for the function of "manual administration" of the government**. This factor gained a special meaning under the incomplete government, where the offices of the Minister of Defense and the Minister of Transport are vacant since June and the office of the Minister of Finance – since February 2009. These ministerial offices are decisive for the government policy with regard of the preparation of the national budget for 2010.

The personnel policy of parliament and the government needs a higher level of transparency. With regard to the fact that draft resolutions on the dismissal of Minister of Housing and Communal Services O. Kucherenko, Minister of Health V. Knyazevych and Minister of Labor and Social Policy L. Denisova (in total – 10 persons), were registered in parliament as of 15 October, it is possible to state that **these potentially vacant positions might create additional problems for the functioning of the government composed of 25 persons up to the absence of a quorum for decision-making.**

On 9 October, Speaker Lytvyn aid, "There are candidates for 2 Vice Prime Ministers and 2 ministers." The matter concerned the support to candidates submitted by the government on 7 October, 2009. By a respective resolution, the Cabinet proposed parliament to appoint M. Zgurovsky and Y. Lyubonenko Vice Prime Ministers, F. Yaroshenko – Minister of Finance and T. Vasadze – Minister of Transport. Meanwhile, it is unclear whether the matter concerns the substitution of officials or the introduction of additional offices of Vice Prime Ministers, what their area of competence will be and what needs to determine it. The identical Cabinet resolution of 25 June mentioned the office of the Minister of Justice, which was deleted in the October version of the document notwithstanding the draft resolution on the dismissal of Minister of Justice M. Onyshchuk registered on 1 June. On 25 June, the cabinet made a proposal to appoint O. Klymenko the Minister of Coal Industry. Hence, it is possible to conclude that public processes of nominating potential candidates for government offices and discussion of their business qualities and political platforms, which, given the absence of a basic document on policy development, the Government Action Program, creates additional risks for the decision-making system and the assessment of vectors of interparty and intergroup agreements.

International organizations and institutions that study corruption and develop anti-corruption mechanisms, the World Bank, the Transparency International and the Council of Europe (the UPAC Project: Support to Good Governance: Project against Corruption in Ukraine), concentrate on certain sectors of political corruption. Specifically, the World Bank researches the impact of corruption in private corporations on the system of government, while the Project of the Council of Europe is focused on the proper administration of procedures.

In the WB report, a measure of corruption is the impact of state capture on individual firms. In countries like Ukraine, state capture can be extremely pernicious to an economy and society because it can fundamentally and permanently distort the "rules of the game" in favor of a few privileged insiders. (Though, as earlier, the issues of the essence of political transition of the post-Soviet states, whether they could be referred to transitional economies and whether other conceptual approaches should be applied to changes in political processes in the countries like Ukraine remain open.) Another feature that characterizes the WB approach to corruption is linked to the identification of the subject of corruption. It is economic entities interested in state capture and administrative corruption. (Conversely, this Document on Political Risk Assessment surveys political corruption and relations that help illegitimately enhance political positions of individuals contrary to social and, sometimes, national interests.)

In its survey on corruption, the World Bank uses the concept of state capture, which focuses on the impact of private firms on the formulation and content of laws and regulations.[13] Under the survey, "State capture refers to the actions of individuals, groups or firms both in the public and private sectors to influence the formation of laws, regulations, decrees and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials. There are many different forms of this problem. Distinctions can be drawn between types of institutions subject to capture, the legislator, the executive, the judiciary or regulatory agencies, and types of actors engaged in capture, private firms, political leaders or narrow interest groups. Yet, all form of state capture are directed toward extracting rents from the state for a narrow range of individuals, firms or sectors through distorting the basic legal and regulatory framework with potentially enormous losses for the society at large. They thrive, where economic power is highly concentrated, countervailing social interests are weak and formal channels of political influence and interest intermediation are underdeveloped."[14]

The survey identified a number of specific activities that fall within the definition for state capture, including: the "sale" of parliamentary votes and presidential decrees to private interests; the sale of civil and criminal court decisions to private interests; corrupt mishandling of central bank funds; and illegal contributions by private actors to political parties.[15] Though soon, the essence of state capture was limited to the two key parameters: bribes to parliamentarians (the impact on the process and content of law-making) and government officials (the impact on the process of decision implementation).

The provision of the WB last survey of 2006 that state capture "can have pernicious effects on economic competition by restricting market entry and distributing economic preferences to influential elites"[16], "privileged insiders", proves to be true for Ukraine (a good example is privatization in the interests of individual buyers). Corruption shifts from economy to politics and, in its turn, affects the former. **By**

[13] James H. Anderson, Cheryl W. Grey, WB Survey on Anticorruption in Transition 3 Who is Succeeding… and Why? – Washington, 2006. P. 17
[14] Anticorruption in Transition: A Contribution to the Policy Debate. – Washington, 2000. P. 15
[15] The same source, p. 16
[16] James H. Anderson, Cheryl W. Grey, WB Survey on Anticorruption in Transition 3 Who is Succeeding… and Why? – Washington, 2006. P. 10

creating unequal conditions for different economic entities, political corruption adversely affects the business climate.

Businessmen believe the instable legislation, corruption and the political instability to be the main obstacles to the conduct of business. The fourth factor is unequal competition terms. Corruption is a reason for the instable legislation (which allows authorities at a variety of levels to exercise their powers "manually") and for unequal competition terms (the "green light" to bribe-givers and the "red light" to other businessmen).

The regulatory environment is one of the most important components of the investment climate and, probably, the most decisive for the development of investment activities at the city level. Yet at the same time, it is the most corrupt.

In general, the regulatory environment is characterized by the following parameters:

• Level of clarity and consistency of the government regulatory policy

• Impact on the investor by different national authorities (registration, licensing, certification etc.)

• Level of bureaucracy and corruption.

The clarity and consistency of the government regulatory policy is manifested through the capacity of power to set equal, firm and understandable for businessmen rules of communication with a regulatory body starting with the registration of business up to its closure.

Notwithstanding the simplified registration of economic entities in Ukraine, procedures for conduct of business are complicated and time-consuming. The administrative interference with the business through making unjustified barriers and obstacle is still the reality. For the investor, this means additional expenses and risks and an almost guaranteed loss of invested money, if a system of protection against such interference is absent. The investor may get a kind of an "insurance policy" through corrupt ties with national and/or local authorities in the person of their authorized officials. Hence, expenditures for corrupt payments (bribes) become an essential addition to money invested. This surely does not favor the attraction of investment.

Corruption that attends the conduct of business in Ukraine is manifested in two ways: through the collection of the so-called administrative rent by some government officials and the purchase of seats in authorities by representatives of the private business to ensure competitive advantages for their companies.

The administrative rent problem is closely linked to a relatively low salary of average government officials and the deficient and complex law, which gives an impetus to everyday corruption.

The dependence of permissive, control and advisory, information and consulting actions of authorities upon an individual official, the dominance of private and sole decision-making methods in administrative governance procedures instead of systemic administrative ones, the lack of openness, public accountability and controllability of specific officials – all these created favorable conditions for the retention ad spread of corruption in relations of citizens and power.

The practice confirms the following regularity: the more difficult the regulatory environment is for the conduct of business at the national and regional levels (permissive, coordinating, customs, tax, land use and rent procedures), the more opportunities government officials have to extort money in different ways and to commit corrupt offences.

However, the fight against corruption of some officials is a matter of law-enforcement agencies. And their capacity to combat it is the topic of a special discussion. It is much more difficult to counteract the purchase of seats in authorities by representatives of the private business. National and local businessmen place their protégés to authorities to get preferences for their companies, which has the harmful effect on the free competition, which, in its turn, leads to the distorted distribution and redistribution of markets for goods, services and capital.

The main thing is that these entail the system distortion of government institutions, which hampers the strengthening of their role in the socio-economic development of the state.

Despite local authorities have to positively affect the creation of acceptable conditions for the conduct of business, they often interpret this as active counteraction to the advent of "outside" investors to a city/region. In such the situation, even the consent of an investor to pay for loyalty of authorities may be insufficient. As a result, volumes of attracted investment resources, often pivotal for structural changes and the regional development on the whole, remain minor.

Corruption as a result of the collusion of power and the business remains the main system barrier to the development of the small business despite the gradual establishment of its infrastructure, the growth of budget receipts from it and the deeper understanding of the importance of its role by the society and authorities.

Taking into account the fact that the small business is actually deprived of the opportunity to represent and lobby its interests in authorities at a variety of levels, the problem of the contradictoriness of the socio-economic magnitude and the weak economic viability of this economic segment is still unsolved. Left face to face with the official, the small business entity must survive (overcome numerous challenges and structural barriers) by means of going into the shadow, i.e. by means of corrupting opportunities to work and exist for a while. This leads to the crisis of the mass consciousness and behavior, which spreads to all social areas.

Hence, only the formulation of effective laws aimed to gradually oust corruption from all spheres of the social life will make it possible to radically change terms of business so that to decrease corruption risks.

THE UKRAINIAN STATE AGAINST CORRUPTION

With the support of the World Bank, the Council of Europe, the GRECO and the OECD, Ukraine takes anti-corruption actions. Six blocks of anti-corruption initiatives, suggested by the President of Ukraine in 2008, are being gradually put into practice. The counteraction to political corruption shall be based on the application of transparent procedures in all social areas.

The bills "On the Conflict of Interests in the Work of Government Officials", "On Actions of Government Financial Control of the Public Service" and "On Lobbying" are under consideration of parliament.

The government is drafting bills, which might serve as an essential factor in the reduction of corruption risks in decision-making, if enacted and complied with. Specifically, the matter concerns **the Methodology for the Anti-Corruption Examination of Draft Normative and Legal Acts** endorsed by the Cabinet resolution of 16 September, 2009 (not in force yet). The document governs, "Major objectives of the anti-corruption examination shall be to identify the availability/absence of corruption factors, i.e. the body of rules that stimulate or might stimulate the commitment of corrupt violations ad to make recommendations for their elimination." According to the Methodology, "Draft normative and legal acts with potentially high corruption risks shall be understood as bills regulating:

relations linked to the implementation of decisions, including individual ones; the determination of human and civil rights, freedoms and duties and methods for their exercise; management of state-owned or communal property and its alienation; issues of customs, tax and financial policies; the setting of tender and auction procedures for the alienation/purchase of goods, woks and services; issues of the investment and innovation activity; services and privileges to be rendered to certain categories of economic entities; the setting of powers of executive authorities and local self-government bodies and their officials, in particular the permission to independently determine a procedure/mechanism to solve problematic issues; the delegation of powers of executive authorities and local self-government bodies to enterprises and organizations, irrespective of their form of property; administrative services to be rendered to executive authorities, local self-government bodies and their officials; and the exercise of control and advisory functions by executive authorities, local self-government bodies and their officials." The term of the anti-corruption examination may not exceed 15 days after a bill was forwarded to an authorized representative of the government responsible for the anti-corruption policy. Results of the anti-corruption examination shall be made public on the government site within 15 days after the passage (approval) of the said bill, save bills containing information, access to which is restricted, or which pertains to the state secret.

An authorized representative of the government responsible for the anti-corruption policy is a new institution that shall formulate and implement government policy in this area acting on the basis of a respective resolution approved by the Cabinet resolution of 24 April, 2009.

Another novelty is **the launch of a project on the establishment of internal control services at national and local executive authorities**. A respective Cabinet draft resolution reads, "It is suggested to set up, at national executive authorities and regional state administrations, independent subdivisions tasked to prevent, to detect and to take actions to put an end to corrupt offences and corruption in executive authorities and, respectively, in subordinated (controlled) agencies; to promptly respond citizen applications on facts of corrupt offences; to exercise internal control of the compliance with the anti-corruption law, the purpose and effective use of budget funds and the organization of government purchases; to carry out the analytical, organizational, advisory and explanatory work in executive authorities; and to resolve the conflict of interests of government officials."

Corruption shall be combated not only by repressive actions against some "corrupt officials" but also at the institutional level. Only a shift to system reforms could be a driving force for change in socio-political relations, ensure conditions for democratic governance and the proper performance of its functions by the government.

Experts surveyed by the UCIPR (see materials of the expert survey on "Impact of Political Corruption…", pp. 9-10) are rather optimistic about **an opportunity to minimize corruption relations and networks up to the limit, when political corruption loses its system nature and ceases to destroy democratic procedures and to weaken power institutions**.

80% of respondents guess to prevent the irrevocability of relations of political corruption, which stimulate corruption in other social areas, the government needs to regularly develop procedures legitimating power and governance in the framework of governmental institutions on the basis of transparent mechanisms, in particular:

- Carry out system and comprehensive reforms in all areas of the public policy, regulate procedures and mechanisms for lobbying legitimate political, socio-economic and other interests in electoral authorities, in particular local self-government bodies

- Launch transparent mechanisms in the use of public (budget) funds, especially in electoral campaigns (76%); put government funding for parties into practice and limit opportunities of private funding for parties and electoral campaigns. The correction of the electoral model on the basis of its openness and opportunities for citizens to elect and to be elected shall decrease manifestations of clientele relations in party and political relations

- Remove, to the maximum possible extent, corruption risks from the area of administrative services and launch electronic regulation to limit contacts with officials

- Launch the mandatory check-up, by law-enforcement agencies, of information made public in the media about facts of political corruption, respond them according to procedures established by the law and effectively control the compliance with rules of the anti-corruption law.

DEGREE AND STRUCTURE OF POLITICAL RISKS

Assessment of decision-making procedures and analysis of positions of active economic agents in the system of political representation (the political decision-making process) allows assessing the degree of political risks in Ukraine at the current stage (October-December 2009) at the level of 6-7 points.

7 – Unpredictability is high.

- Regional instability, inclusion of the country into the zone of conflict of interests
- Polarized politics
- High level of the "human factor" in decision-making
- Instable political ties
- Voluntarism in decision-making
- Closed decision-making in the interests of decision-making parties
- Disregard of procedures and the need for their recognition
- Unpredictable decisions
- Interference of the government with corporations and high level of corruption.

6 – Unpredictability is higher than average.

- Polarized politics
- High level of the "human factor" in decision-making
- Voluntarism in decision-making
- Closed decision-making in the interests of decision-making parties
- Disregard of procedures and the need for their recognition
- Unpredictable decisions, interference of the government with corporations
- High level of corruption.

INFORMATION ABOUT THE UCIPR PROJECT ON POLITICAL RISK ASSESSMENT

In 2008, having many-year experience of analysis of political processes and activity of political system institutions, the Ukrainian Center for Political Research launched a new project linked to the identification of factors of political risks in Ukraine.

In the context of goals of this project, *a political risk* means tendencies that provoke uncertainty in the process of political and governmental decision-making and impede planning of actions on the country's markets. Political risks grow from political relations, i.e. relation concerning power and property, lie in the area of political decision-making and influence positions of agents in other areas. The term "political risk" does not coincide, by its volume, with the term "political stability" and concerns action/inaction of the government that rapidly changes conditions of work of economic agents on markets and adversely affects positions of different social groups. Political instability is viewed as an element of the structure of political risks.

The project *objective:* to forecast, on a basis of political risk assessment in Ukraine, a probability of the retention of their impact in the short- and medium-term period.

The *subject:* to evaluate the placing and correlation of groups of political influence both inside and outside the country and to analyze proposals of these groups.

The methodology: expert polling (questionnaire poll) concerning assessment of impact of the determined factors, monitoring of decisions and draft decisions of national authorities in Ukraine and abroad (that relate to Ukraine), monitoring of decision-making procedures and assessment of positions of groups of political influence.

Assessments are regularly revised.

The project is implemented by the UCIPR Politics Division.

Division Head – Svitlana Kononchuk; Project Expert – Ihor Nemchynov, Candidate of Philosophy.

Expert survey – Svitlana Gorobchyshyna.